
(2016) 06 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Cr. Revision No. 320 of 2015

Aman Chaudhary

APPELLANT

Vs

State of Himachal Pradesh and another

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 53, 7A

Citation : (2016) ILRHP 1731 : (2016) LatestHLJ(HP) 736 : (2016) 5 RCRCriminal 842

Hon'ble Judges : Mr. Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for the Appellant; Ms. Meenakshi Sharma, Additional Advocate General and Mr. J.S. Guleria, Assistant Advocate General, Mr. N.S. Chandel and Mr. Dinesh Thakur, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Tarlok Singh Chauhan, J. (Oral) - The solitary issue arising in this criminal revision on petition filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000, (for short the "Act") is regarding the juvenility of the petitioner.

2. Since the issue is pre-dominantly a legal one, facts in detail need not to be referred to. Suffice it to say, the petitioner moved an application under Section 7 of the Act for forwarding the juvenile/applicant to the concerned Board for trial in accordance with law. This application was initially allowed vide order dated 11.03.2013, by the learned Sessions Judge, Shimla, however, the said order was set aside by this Court in Criminal Revision No. 120/2013, titled as State of Himachal Pradesh v. Aman Chaudhary and Cr.MMO No.97 of 2013, titled as Nishant Negi v. State of Himachal Pradesh and another, decided on 07.08.2013 and the case was remanded back to the learned Sessions Judge for holding inquiry to reach a rightful conclusion with respect to the juvenility of the

petitioner. Now the Sessions Judge vide order dated 07.08.2015 has determined the juvenility of the petitioner by concluding that he is more than 18 years of age. It is this order which has been assailed in the instant petition as being contrary to the provisions of law. I have heard the learned counsel for the parties and gone through the records of the case.

3. It cannot be disputed that juvenility has to be determined in accordance with Section 7A of the Act read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "2007 Rules").

4. The mode and manner in which the juvenility has to be determined was a subject-matter of decision by the Hon'ble Supreme Court in *Ashwani Kumar Saxena v. State of M.P.*, AIR 2013 SC 553 and it was held as under:-

25. We may in the light of the judgments referred to herein before and the principles laid down therein while examining the scope of Section 7 A of the Act, Rule 12 of the 2007 Rules and Section 49 of the Act examine the scope and ambit of inquiry expected of a court, the J.J. Board and the Committee while dealing with a claim of juvenility.

26. We may, however, point out that none of the above mentioned judgments referred to earlier had examined the scope, meaning and content of Section 7A, Rule 12 of the 2007 Rules and the nature of the inquiry contemplated in those provisions. For easy reference, let us extract Section 7A of the Act and Rule 12 of the 2007 Rules:

"Section 7A - Procedure to be followed when claim of juvenility is raised before any court.

(1)Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary(but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

Rule 12. Procedure to be followed in determination of Age.?- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as

the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

(emphasis added)

27. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an "inquiry" and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word "inquiry" has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

29. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions.

"Inquiry" as defined in Section 2(g), Cr.P.C. reads as follows:

"Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in section 2(h), Cr.P.C. reads as follows:

"Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

The expressions "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in sections 2(g) and 2(h) of the Code of Criminal Procedure."

30. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. We find in very many cases that the Court/the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J. Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

31. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12(3)(a)(i) to (iii). The courts in such situations act as *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. "Age determination inquiry" contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the

court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

36. Age determination inquiry contemplated under the J.J. Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination."

5. It would be evident from the aforesaid exposition of law that age determination inquiry contemplated under Section 7 of the Act read with Rule 12 of 2007 Rules, enables the Court to seek evidence and in that process, the Court can obtain matriculation certificate or equivalent certificate, if available. Only in the absence of matriculation or equivalent certificate, the Court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation certificate or equivalent certificate or date of birth certificate from the school first attended, the Court need obtain the birth certificate given by a Corporation or a Municipal Authority or a Panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the Court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his/her age on the lower side

within the margin of one year.

6. Similar issue thereafter came up for consideration before the Hon''ble Supreme Court in *Jodhbir Singh v. State of Punjab* AIR 2013 SC 1 wherein it was made clear that Rule 12 of the Rules should be the basis for determination of the age of the child victim as well as child in conflict in law. It was further held that in the scheme contemplated under Rule 12(b), it is not permissible to determine the age in any other manner.

7. Identical issue came up recently for consideration before the Hon''ble Supreme Court in *Nagendra v. State of Uttar Pradesh* 2015(4) Cri CC 571, wherein the juvenility had been determined on the basis of the school leaving certificate which did not fall in any of the provisions contemplated under Rule 12 of the 2007 Rules and after placing reliance on the judgment of Ashwani Kumar Saxena's case (*supra*), it was held as under:-

"3. Having given our thoughtful consideration to the submission advanced at the hands of the Learned Counsel for the appellant, we are satisfied, that a school leaving certificate is not a relevant consideration to determine the juvenility of an accused/convict Under Rule 12(3) thereof. The afore-mentioned statutory provision was not considered by this Court while deciding *Ranjeet Goswami's* case. The same cannot therefore be any precedential value in terms of the statutory provisions, referred to here in above. For the reasons recorded here in above, we find no merit in this appeal. The same is accordingly hereby dismissed."

8. Similar reiteration of law can be found in a very recent judgment of the Hon''ble Supreme Court in *Parag Bhati (Juvenile and others) v. State of Uttar Pradesh* and another AIR 2016 SC 2418.

9. Adverting to the facts of the instant case, the impugned order passed by the learned Sessions Judge will now have to be tested on the basis of the principles laid down by the Hon''ble Supreme Court in the cases cited above. The relevant portion of the order passed by the learned Sessions Judge reads thus:-

"26. The most material witness to prove the age of the accused Aman Chaudhary is AW-9 Sh. Nand Kishore Singh, Principal Middle School Mukundpur G.P.Gosaigaon, who deposed that on the receipt of application Ext.AW-9/A, he supplied the date of birth certificate of accused Aman Chaudhary Ext.AW-9/B and as per this certificate, date of birth of the accused was 05.02.1993 and the accused had left the school on 11.01.2005. He brought the original record and according to him, the date of birth was entered in the register as per application Ext.AW-9/C moved by his father. He has further stated that the entry qua admission of accused in Admission Register of School at serial No.11 dated 16th January, 2002 is Ext.AW-9/D, which is true and correct as per the original record and the transfer certificate issued by the school is Ext.AW-9/E. Admittedly, in the certificate Ext.AW-9/E, the date of birth of accused Aman Chaudhary is recorded as 05.02.1993.

27. Thus, from the evidence on record, as discussed above, it is proved that the date of birth of accused Aman Chaudhary is 05.02.1993. The offences alleged to have been committed by the accused admittedly dated 20.10.2011. It means that the applicant/accused Aman Chaudhary on that day was more than 18 years of age and as such he is not juvenile in conflict with law. Accordingly, the application fails and is hereby dismissed. It be tagged with main case file."

10. It is not in dispute that Ex.AW-9/B is a school leaving certificate, but the same has not been issued by the school first attended by the petitioner nor is it a matriculation or equivalent certificate. Rather, the petitioner had taken admission in the school when he was 9 years old on 16th January, 2002 and had then left the school on 11.01.2005.

11. It is thus clear that the certificate which has been relied upon by the learned Sessions Judge to come to the conclusion that the petitioner was more than 18 years of age does not fall within the scheme and any one of the categories contemplated under Rule 12(b) and, therefore, it was not permissible for the learned Sessions Judge to have determined the age of the petitioner on the basis of this certificate.

12. In view of the aforesaid discussion, the petition is allowed. The order passed by the learned Sessions Judge (Forests), Shimla, is set aside and he is directed to determine the juvenility of the petitioner in accordance with Rule 12(3) (b) of the Rules and thereafter pass consequential orders in accordance with law. Pending application, if any, also stands disposed of. Interim order stands vacated.